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KENNETH MONTESANO,
Plaintiff,
v.
SEDGWICK, INC.,
Defendant.

Case No. [24-cv-05099-WHO](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 25

Plaintiff Kenneth Montesano (“Mr. Montesano”) brings this lawsuit pro se against Sedgwick Claims Management Services, Inc. (“Sedgwick”), his former employer’s third party administrator for workman’s compensation claims. Sedgwick has moved to dismiss Mr. Montesano’s First Amended Complaint (“FAC”) on the grounds that his claims are barred by the California Workers Compensation Act. [Dkt. No. 14]. Because each of Mr. Montesano’s claims is rooted in workman’s compensation issues, California law requires that I agree with Sedgwick. The claims Mr. Montesano asserts are serious. But, he may not bring them in state or federal court—he must instead either return to the Workers Compensation Appeals Board or seek another avenue for relief. Sedgwick’s motion is therefore GRANTED. Mr. Montesano’s complaint is DISMISSED WITH PREJUDICE.

BACKGROUND

The following facts, presumed true, are drawn from Mr. Montesano’s FAC.

On December 22, 1989, Mr. Montesano suffered an injury while working numerous holiday shifts at Federal Express Corporation (“FedEx”). FAC ¶¶ 1, 7. After lifting what amounted to thousands of pounds of boxes over the course of several days, Mr. Montesano developed pain in his neck and shoulder and suffered numbness and weakness in his left hand. FAC ¶ 7. Mr. Montesano raised his injury before the California Workers’ Compensation Appeals

1 Board (“the WCAB”) which determined that the injury caused Mr. Montesano permanent
2 disability benefit of 13% coverage. *Id.* Over the years, Mr. Montesano suffered additional back
3 injuries while working for FedEx. FAC ¶ 9. In February of 1995, a workers compensation Judge
4 awarded Mr. Montesano an increase in temporary and permanent disability benefits along with
5 medical treatments and reimbursements. FAC ¶ 8–9; Notice of Removal [Dkt. No. 1-1] at 49.
6 Mr. Montesano had spinal surgery in 2021, which caused him to become permanently disabled
7 and required that he no longer work for FedEx. FAC ¶ 11.

8 Throughout Mr. Montesano’s time at FedEx, Sedgwick acted as FedEx’s “workman’s
9 comp insurance company.”¹ FAC ¶ 1. Mr. Montesano alleges that at least one other company,
10 Genex Services, LLC (“Genex”), was a third-party medical review company working with
11 Sedgwick and therefore privy to and involved in Mr. Montesano’s efforts to obtain workers
12 compensation. *Id.*

13 Starting in 2019, Sedgwick started to make it more difficult for Mr. Montesano to receive
14 payments for his acupuncture therapy and massage therapy treatments. FAC ¶ 12. And, starting
15 in 2022, Mr. Montesano had to engage in the appeal process several times to receive access to
16 those treatments. FAC ¶ 13. In September 2023, the Centers for Medicare and Medicaid Services
17 determined that Mr. Montesano was entitled to \$216,062 to cover his future medical services.
18 FAC ¶ 14. Mr. Montesano alleges that Genex denied knowledge of this entitlement and rejected
19 his request to provide payment. *Id.* Sedgwick has since refused to provide Mr. Montesano
20 coverage for his treatments, although he continues to need acupuncture and massage therapy.
21 FAC ¶ 15. Mr. Montesano contends that as a result of his inability to obtain these treatments, he
22 has needlessly suffered additional pain, faced insomnia, and sustained losses in his mobility. FAC
23 ¶ 16. Additionally, his family has been negatively impacted. *Id.* When Mr. Montesano spoke
24 with a Genex representative in May of 2024, she told him that “it is cheaper for them to deny
25 [him] [his] treatments and for [him] to sue them than to keep paying for [his] treatments.” Dkt.
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¹ In its Motion, Sedgwick clarifies that it is FedEx’s third-party administrator for workers’
28 compensation claims—not, as Mr. Montesano alleges—an insurance company. Dkt. No. 25 at 3,
n.1. This is a distinction, Sedgwick admits, without a difference in this case. *Id.*

1 No. 28 at 6.

2 Mr. Montesano first filed a lawsuit against Genex in the Alameda County Superior Court
3 on July 12, 2024, alleging six causes of action. Notice of Removal [Dkt. No. 1-1] 9–21. Genex
4 removed the case to federal court on August 13, 2024. On September 30, 2024, Mr. Montesano
5 moved to amend his complaint, explaining that he wished to dismiss Genex from the complaint
6 and instead name Sedgwick as the sole named defendant. Dkt. No. 10. I granted the motion and
7 Mr. Montesano filed his First Amended Complaint on October 15, 2024.² Dkt. Nos. 13, 14. In his
8 FAC, Mr. Montesano named only “Sedgwick, L.L.C.” as a defendant³. Dkt. No. 14 at 1. The
9 FAC alleges six causes of action: (1) Fraud, FAC ¶¶ 17–22; (2) Disabled Elder Abuse, FAC ¶¶
10 23–28; (3) Deception in the Presence of Evidence, FAC ¶¶ 29–34; (4) Deliberate Indifference,
11 FAC ¶¶ 35–40; (5) Medical Insurance Malpractice, FAC ¶¶ 41–46; and (6) Intentional &
12 Negligent Infliction of Emotional Distress, FAC ¶¶ 47–52.

13 On August 19, 2025, Sedgwick filed a Motion to Dismiss the FAC. Motion to Dismiss
14 (“MTD”) [Dkt. No. 25]. Mr. Montesano failed to respond to the motion, and Sedgwick filed a
15 Notice of Non-Opposition on September 9, 2025. Dkt. No. 27. On September 10, 2025, Mr.
16 Montesano filed an Opposition to Sedgwick’s motion, eight days late. Opposition to the MTD
17 (“Oppo.”) [Dkt. No. 28]. Sedgwick filed an administrative motion to file a late Reply, which I
18 granted. Dkt. Nos. 30, 33. On September 24, 2025, Sedgwick filed its Reply in support of its
19 motion. Reply ISO MTD (“Reply”) [Dkt. No. 34]. I held a hearing on the motion on October 1,
20 2025.

21 **LEGAL STANDARD**

22 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint
23 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to
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26 ² Despite dropping Genex from the case, the FAC continues to refer to Genex as a “defendant” or
27 refers to “defendants” in the plural. I read these references to Genex’s actions to broadly stand for
28 allegations of Sedgewick’s alleged acts as FedEx’s principal third party administrator.

³ Sedgwick notes in its opposition that the correct name of the company is “Sedgwick Claims
Management Services, Inc.” Dkt. No. 25 at 1.

1 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its
2 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when
3 the plaintiff pleads facts that “allow the court to draw the reasonable inference that the defendant
4 is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation
5 omitted). This standard is not akin to a probability requirement, but there must be “more than a
6 sheer possibility that a defendant has acted unlawfully.” *Id.* While courts do not require
7 “heightened fact pleading of specifics,” a plaintiff must allege facts sufficient to “raise a right to
8 relief above the speculative level.” *Twombly*, 550 U.S. at 555, 570.

9 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
10 court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
11 plaintiff. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court
12 is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
13 fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
14 2008).

15 If the court dismisses the complaint, it “should grant leave to amend even if no request to
16 amend the pleading was made, unless it determines that the pleading could not possibly be cured
17 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In making
18 this determination, the court should consider factors such as “the presence or absence of undue
19 delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments,
20 undue prejudice to the opposing party and futility of the proposed amendment.” *Moore v. Kayport
Package Express*, 885 F.2d 531, 538 (9th Cir. 1989).

22 “A document filed *pro se* is ‘to be liberally construed,’ and ‘a *pro se* complaint, however
23 inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by
24 lawyers.’” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations omitted); *see also Bretz v.
25 Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc). However, *pro se* pleadings must still
26 allege facts sufficient to allow a reviewing court to determine whether a claim has been stated.
27 *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “A *pro se* litigant
28 must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is

absolutely clear that the deficiencies of the complaint could not be cured by amendment.” *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citation omitted).

DISCUSSION

Sedgwick argues that each of Mr. Montesano’s causes of action is barred by the exclusivity provisions included in the California Workers Compensation Act (Cal. Labor Code § 3200 *et seq.*). The seminal case is *Marsh & McLennan, Inc. v. Superior Court*, where the California Supreme Court held that the California worker’s compensation “preempts a private cause of action by an injured worker against the independent claims administrator of his self-insured employer for the delay or refusal to pay compensation benefits.” 49 Cal.3d 1, 4 (1989). It further held that “the WCAB is an employee’s exclusive forum for relief when any entity unreasonably delays or refuses to pay his compensation benefits.” *Id.* at 10. “Only when the entity commits tortious acts independent of its role as a provider of workers’ compensation benefits may an employee maintain a private cause of action” *Id.* Any such tortious act must be “so extreme and outrageous that [a claims administrator] in effect stepped out of its role as a claims administrator” *Id.* at 11.

Mr. Montesano has not pleaded any causes of action that allege Sedgwick “commit[ted] [any] tortious acts independent of its role” as FedEx’s independent claims administrator. *Id.* Similar to the claims at issue in *Marsh*, Mr. Montesano has alleged claims for fraud and emotional distress. FAC ¶¶ 17–22; 47–52. The trial court in *Marsh* sustained the demurrer at issue for the alleged violation of the insurance code. *Marsh*, 49 Cal.3d at 5. That directly maps onto Mr. Montesano’s fifth cause of action for “medical insurance malpractice.”⁴ FAC ¶¶ 41–49. In addition, Mr. Montesano’s second, third, and fourth claims for relief for “disabled elder abuse,” “deception in the presence of evidence,” and “deliberate indifference” each likewise “stem[] from the discontinuance of payments to [Mr. Montesano] and is properly addressed by the WCAB.” FAC ¶¶ 23–40; *Marsh*, 49 Cal.3d at 11.

For example, Mr. Montesano's second cause of action for "disabled elder abuse" alleges

⁴ The FAC alleges the fifth cause of action for “medical insurance malpractice,” but notes in the alternative that “at minimum,” Sedgwick has committed “Worker’s Compensation Malpractice.” FAC ¶ 43.

1 that he suffered elder abuse by “being put through the *run-around* of paperwork of third party
2 contractors who knew they were going to deny him treatment coverage.” FAC ¶ 27 (emphasis in
3 original). His third cause of action for “deception in the presence of evidence” is founded on Mr.
4 Montesano’s claim that Sedgwick “KNEW [he] had lifetime medical coverage for any treatment
5 he needed,” and so denying Mr. Montesano coverage amounted to a violation of California Civil
6 Code Chapter 3. FAC ¶ 31. And, finally, Mr. Montesano’s fourth cause of action for “deliberate
7 indifference” rests on his assertion that Sedgewick acted with “conscious or reckless disregard of
8 the consequences of [its] acts or omissions,” and that it knew or should have known its “attempt[]
9 to drop [Mr. Montesano] like a fly hoping he would go away and not fight for his, already known,
10 lifetime medical coverage for treatments” “would cause [Mr. Montesano] serious injury to his
11 persons, whether it was in private or in public.” FAC ¶ 37. Each of these causes of actions alleges
12 incredibly serious and consequential injury to Mr. Montesano. After decades of dedication to his
13 work at FedEx, and several WCAB decisions providing for and increasing his access to disability
14 benefits, it appears far from fair for Mr. Montesano to continue to endure the ongoing rigmarole
15 that he alleges in his complaint. But each of the claims alleged in his complaint is ultimately
16 rooted in Sedgewick’s alleged denials of Mr. Montesano’s benefits.

17 Mr. Montesano argues that his case is inappropriate for the WCAB because of the willfully
18 negligent nature of Sedgwick’s alleged actions. Oppo. 2. But I am not aware of any caselaw, and
19 he has not presented any, to support his argument that because a third-party administrator acts
20 *willfully*, that allows an individual to circumvent the requirement that “the WCAB has exclusive
21 jurisdiction over disputes regarding an employee’s right to compensation.” *Marsh*, 49 Cal. 3d at
22 5. He contends that Sedgwick is not accredited and has more than 500 complaints lodged against
23 it to support his claims of Sedgwick’s willful and fraudulent acts. Oppo. 2–3. That may be, but
24 that does not allow Mr. Montesano’s claims to avoid review by the WCAB.

25 I am sympathetic to Mr. Montesano’s situation and understand his arguments that his
26 health and wellbeing were improving when he was receiving the now-denied services. But I am
27 not in a position to grant relief. Each of his claims for relief is directly related to Sedgwick’s
28 denials for workers compensation benefits. Bound by the California Supreme Court’s

1 interpretation of California Workers Compensation Act, I conclude that each of the causes of
2 action in Mr. Montesano's first amended complaint is "properly addressed by the WCAB."
3 *Marsh*, 49 Cal. At 11.

4 **CONCLUSION**

5 For the reasons explained above, Sedgwick's Motion to Dismiss is GRANTED. This does
6 not mean that Mr. Montesano is without a way to seek a remedy, only that he cannot do so in
7 Federal or State court. At the hearing, he confirmed that he filed the complaint because of the
8 incidents that caused him to suffer workplace injury. His pleading in this case can "not possibly
9 be cured by the allegation of other facts," because any additional facts would still be rooted in
10 workers compensation issues and would require WCAB review. *Lopez*, 203 F.3d at 1127; *see also*
11 *Cato*, 70 F.3d at 1106 ("A pro se litigant must be given leave to amend [his] complaint, and some
12 notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could
13 not be cured by amendment."). His complaint is DISMISSED WITH PREJUDICE.

14 **IT IS SO ORDERED.**

15 Dated: October 6, 2025



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17 William H. Orrick
18 United States District Judge
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